

services.”⁴⁴ The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.⁴⁵ This Commission has also required that the ILEC must provide all technically feasible capacity related transmission services, including DS-1 transport.⁴⁶

B. BellSouth Frequently Fails to Provide DS-1 UNEs At Parity

A critical component in evaluating BellSouth’s performance in providing DS-1 facilities is whether BellSouth is providing the facilities in a timely manner.⁴⁷ BellSouth fails to provide DS-1 UNE intervals at parity with special access intervals that BellSouth provides to itself.⁴⁸ In fact, BellSouth has stated it has no obligation to provide interval parity for DS-1 UNE interoffice channels or DS-1 UNE local channels.⁴⁹ The problem is exacerbated by a lack of performance measurements that can be used to ensure that BellSouth is providing these facilities in a timely and nondiscriminatory manner. As Cbeyond notes, although the Georgia PSC has established performance measurements and standards for certain UNEs, “there are no established performance measurements for DS-1 UNE combinations, DS-1 interoffice channels, or DS-1 local channels.”⁵⁰ As Cbeyond notes:

[T]herefore, prior to receiving 271 relief, BellSouth must be required to provide . . . DS1 UNE combination, DS1 UNE IOC and DS1 UNE local channel intervals at parity with BellSouth’s intervals for special access Further, the FCC has stated that in order to assess whether a BOC has afforded an efficient competitor a

⁴⁴ 47 U.S.C. § 271(c)(2)(B)(v).

⁴⁵ *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, ¶ 201 (1998).

⁴⁶ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, ¶ 308 (1999)(“UNE Remand Order”).

⁴⁷ *Verizon MA 271 Order* at ¶¶ 156, 209.

⁴⁸ *Cbeyond GA Comments* at 18.

⁴⁹ *Id.* at 13.

⁵⁰ *Cbeyond GA Comments* at 6.

meaningful opportunity to compete, it will examine to see whether specific performance standards exist for those functions. Therefore, performance measures with strong penalties should be established for each of these DS1 unbundled network elements. These performance measures should be monitored and complied with for at least three (3) months prior to BellSouth being able to demonstrate whether it provides nondiscriminatory access for DS1 UNEs.⁵¹

In addition, BellSouth's retail division is able to order special access electronically while CLECs must place orders for DS1 UNEs via a "less efficient manual process that is prone to delays."⁵² Other RBOCs, such as Qwest, have implemented electronic ordering processes for DS1 facilities.⁵³

C. Maintenance and Repair of DS-1 Facilities

CLECs have been experiencing similar maintenance and repair problems with high-capacity UNEs that they experience with special access facilities. One CLEC reports that over a ten month period, its number of repeat trouble reports (within 30 days) averaged almost 20%.⁵⁴ In April 2001, BellSouth had repeat trouble report percentages of 48% for Design loops, and 24% for UNE Design.⁵⁵ KMC notes that because of these repeated outages it has been forced to install several DS0 circuits as back-up circuits for each BellSouth DS1 so that customers will not be completely out of service when the DS1 goes down. In one instance, KMC had to install 24 DS0s to back up a DS1 that failed every five days.⁵⁶

US LEC has experienced continuing problems with circuits that are "turned up broke" ("TUB"). When this occurs, US LEC is placed in the middle between the provisioning center

⁵¹ *Id.* at 18.

⁵² *Id.* at 16.

⁵³ *Id.*

⁵⁴ GA PSC Docket No. 6863-U, Comments of KMC Telecom at 6 (May 31, 2001) ("*KMC GA Comments*").

⁵⁵ *Id.*

⁵⁶ *KMC GA Comments* at 10.

who refuses to work the trouble on the grounds that their responsibility was to provision the circuit, which they did, and the repair center who does not want to accept a trouble ticket for a circuit that has never worked. Hours go by while US LEC waits for one of the BellSouth organizations to accept responsibility.

The fact that BellSouth's provisioning is suspect for both special access facilities and DS-1 UNEs demonstrates that BellSouth is clearly discriminating in its provisioning of high capacity facilities to CLECs. The Commission should require BellSouth to implement uniform and stringent performance standards for high capacity facilities regardless of how they are classified and implement substantial penalties for failure to meet the performance standards.

IV. BELLSOUTH FAILS TO SATISFY CHECKLIST ITEM 2 IN REGARD TO OSS

A. Legal Standard

Checklist Item 2 requires that a BOC provide non-discriminatory access to network elements.⁵⁷ In analyzing whether a BOC provides non-discriminatory access to OSS for Section 271 purposes, the Commission has adopted a two-step approach. First, the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."⁵⁸ The Commission has traditionally focused on the functionality and capacity of the BOC's OSS in its analysis of this step.

⁵⁷ 47 U.S.C. § 271(c)(2)(B)(ii).

⁵⁸ *SBCTX Order* at ¶ 96.

In the second step, the Commission determines if “the OSS functions that the BOC has deployed are operationally ready, as a practical matter.”⁵⁹ It looks at performance measures and other evidence of commercial readiness.

It must be noted from the outset that the Georgia OSS testing performed by KPMG was designed by BellSouth and paid for by BellSouth. With no malice towards KPMG, US LEC does not believe that this structure results in an unbiased and reliable framework within which to evaluate the performance of an OSS system. However, as will be demonstrated below, BellSouth has failed its own OSS testing. US LEC and other CLECs believe that the testing designed by the Florida Public Service Commission and paid for by the Florida Public Service Commission constitutes a more unbiased analysis of BellSouth’s performance, and believes this Commission must defer to that test. However, Commenters note that this Commission should not go beyond the scope of review of this application by determining that the Georgia OSS test has any applicability except within the geographic confines of the state of Georgia.

In this case, both the general functionality/capability of BellSouth’s OSS and its performance at the various stages of the OSS process demonstrate that BellSouth is not satisfying the requirements of the competitive checklist in regard to OSS.

B. Functionality and Capacity of BellSouth’s OSS

The Commission requires that a 271 applicant demonstrate that its OSS is designed to accommodate both current and projected demand for competing carriers’ access to OSS functions.⁶⁰ There are serious concerns about the functionality and capacity of BellSouth’s OSS systems.

⁵⁹ *Id.*

⁶⁰ *Id.* at ¶ 97.

The Commission has previously relied on a combination of performance data and third-party testing to evaluate the overall functionality and capability of an applicant's OSS. The Commission has stated:

[w]e examine performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling demand and will be able to handle reasonably foreseeable demand volumes. The most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent data on commercial usage, the Commission will consider the results of the carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the scope of commercial readiness of a BOC's OSS. We reiterate, however, that the persuasiveness of third-party review is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself.⁶¹

The evidence BellSouth has presented does not elicit confidence that BellSouth's OSS is adequately handling current demand and is able to handle reasonably foreseeable demand volumes. There are questions as to the validity of its performance data and the conditions and scope of the independent third-party testing conducted. Even accepting BellSouth's OSS evidence at face value, the evidence does not demonstrate compliance with Checklist Item 2.

BellSouth reports data on its performance in its Service Quality Measurements reports ("SQM"), and this data is posted on BellSouth's Performance Measurement and Analysis Platform ("PMAP") website.⁶² The Southeastern Competitive Carriers Association ("SECCA"), of which US LEC is a member, noted these PMAP reports are incomplete and inaccurate including instances where "data on transactions with BellSouth are missing from the PMAP and the raw data underlying these reports."⁶³ As late as July 2001, BellSouth's data for one CLEC,

⁶¹ *BellAtlantic NY 271 Order* at ¶ 89.

⁶² *Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Georgia Public Service Commission Docket No. 6863-U, Reply Comments of the Southeastern Competitive Carriers Association at 7 (July 16, 2001) ("*SECCA GA Reply Comments*").

⁶³ *Id.*

NuVox, did not include data on the CLEC's facility-based transactions, and instead only included data on its resale transactions which comprised a small fraction of its operations in Georgia.⁶⁴ Even when the data was posted, it failed to include more than 2000 local service requests ("LSRs").⁶⁵ NuVox also noted that there were significant omissions in data pertaining to flow through report and data requests.⁶⁶

XO noted that BellSouth's reports understated the amount of firm order commitments ("FOCs") for orders for local number portability.⁶⁷ The data on BellSouth's Parity Analysis and Remedy Information ("PARIS") website is "inaccurate and incomplete."⁶⁸ AT&T's experience corroborates that "BellSouth's Service Quality Measurement ("SQM") reports and its PMAP are inaccurate and unreliable."⁶⁹ AT&T reported that data for many transactions including LSRs, FOCs, rejections, and completion notices were missing from the reports.⁷⁰ AT&T observed that "BellSouth's numerous and substantial errors demonstrate that this Commission has no assurances regarding the accuracy of BellSouth's data."⁷¹ As SECCA concluded:

SECCA's experience demonstrates BellSouth's self-reported performance data is not reliable. The BellSouth data does not include all CLEC transactions. BellSouth's own reports are not even consistent with each other – reporting different numbers for the same transaction being measured. Because of these demonstrated errors in BellSouth's self-reported data, BellSouth's CLEC Aggregate Data cannot be correct. Neither the Commission nor CLECs can rely

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 8.

⁶⁷ *Id.* at 8-9.

⁶⁸ *Id.*

⁶⁹ GA PSC Docket No. 6863-U, Comments of AT&T Communications of the Southern States, Inc. at Item 2, p. 1 (May 31, 2001).

⁷⁰ *Id.*

⁷¹ *Id.*

on BellSouth's self-reported data. This data cannot serve as a basis for evaluation BellSouth's compliance with Section 271.⁷²

In Louisiana, there were also concerns raised about the validity of data submitted by BellSouth.⁷³

Staff notes that:

AT&T makes numerous allegations concerning the integrity of the performance data that BellSouth has submitted in this docket. These allegations range from BellSouth's refusal to discuss data issues including refusal to perform root cause analysis to claims of missing data or data that is internally inconsistent or irreconcilable.⁷⁴

The concerns in Louisiana are heightened, because unlike in Georgia, the data has not even been audited. Staff stated that it "does not believe that this Commission should delay resolution of this proceeding pending the outcome of the audit, which is intended as a safeguard to ensure data integrity going forward."⁷⁵ Staff, however, based its recommendation on the unaudited performance data, and, thus, the value of its findings as to that performance data is limited by the unaudited nature of the data. In fact, Staff states it is its "considered opinion that the best evidence of nondiscriminatory access to BellSouth's OSS is actual commercial usage in Louisiana."⁷⁶ The lack of audited data coupled with the lack of a third party OSS test in Louisiana leads one to question how accurate an insight into BellSouth's OSS such data provides.

⁷² SECCA GA Reply Comments at 9.

⁷³ Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region, Louisiana PSC Docket No. U-22252(E), Staff's Final Recommendation at 19 (2001) ("LA Staff Recommendation").

⁷⁴ LA PSC Staff Recommendation at 43 (citations omitted).

⁷⁵ Id.

⁷⁶ Id. at 41.

Any missing or inaccurate data would be cause for concern, but this data pertains to such vital issues as FOCs, rejects, flow through, and order completion. The concerns about the completeness and accuracy of BellSouth's data seriously undercuts its claim that it is in compliance with Checklist Item 2. The data that BellSouth does submit also does not provide support that BellSouth is in checklist compliance. KPMG found that BellSouth was not in compliance with 21 evaluation criteria including those pertaining to FOCs and reject notices issued via BellSouth's EDI interface.⁷⁷ The amount of criteria BellSouth did not satisfy may well be understated as AT&T notes that KPMG "aggregated test results in ways that hid performance deficiencies and masked the true performance of BellSouth's systems."⁷⁸ A useful indicator of the overall performance of OSS is the "success ratio." BellSouth states that it met 91% of the OSS benchmarks in Louisiana and Georgia for at least two of the three months from May through July.⁷⁹ What this means is that BellSouth did not meet 9% of OSS benchmarks for at least two of out of those three months. This figure alone shows that BellSouth does not provide nondiscriminatory access to OSS. In April, BellSouth only met 82.7% of Pre-Ordering and Maintenance/Repair submetrics in Louisiana. When the figures are broken down for Maintenance/Repair submetrics only, BellSouth only met 78.6% in April.⁸⁰ For UNE measures for ordering, provisioning, maintenance/repair, and billing, BellSouth only made 81% of the measures in May 2001.⁸¹

⁷⁷ BellSouth Application at 61.

⁷⁸ *AT&T GA Comments* at 8.

⁷⁹ *Id.*, Item 2, at 4.

⁸⁰ *LA PSC Staff Recommendation* at 49.

⁸¹ *Id.* at 54.

Commenters are also concerned about whether BellSouth's OSS is able to handle future demand. There are concerns about the scalability of BellSouth's OSS, *i.e.*, its ability to handle increasing amounts of orders. In this connection, serious questions remain as to whether BellSouth has the capability to scale its OSS to handle the increased volumes. AT&T observed that BellSouth's OSS does not "provide sufficient production capacity to process projected order volumes" and that "the production volume test of the Georgia Third Party Test demonstrated that the installed capacity of the ENCORE pre-ordering and ordering systems was one-half the forecast CLEC demand at year end 2001."⁸² Sprint observes that "KPMG, at BellSouth's apparent insistence, did not conduct the majority of volume testing on BellSouth's actual CLEC order production system."⁸³ BellSouth purportedly insisted on this because "they did not believe that their production system would be able to support those volumes."⁸⁴ WorldCom concurs noting that its experience demonstrates that "BellSouth's OSS is not yet operationally ready to accept commercial volumes of UNE-P orders."⁸⁵ The Commission should ensure not only that BellSouth's OSS is functionally capable today, but that it will be able to handle higher volumes in the future.

In the next section we will focus on specific deficiencies in the various stages of BellSouth's OSS.

C. The Stages of BellSouth OSS

1. Pre-Ordering

⁸² *Id.* Item 2, at 7.

⁸³ GA PSC Docket No. 6863-U, Initial Comments of Sprint Communications L.P. at 6 (May 31, 2001) ("*Sprint GA Comments*").

⁸⁴ *Id.*, *citing*, Docket No. 8354-U, May 8, 2001 Hearing Tr. At 213 (Testimony of KPMG witness Weeks).

⁸⁵ GA PSC Docket No. 6863-U, Initial Comments of WorldCom, Inc. at Item ii, 3 (May 31, 2001) ("*WorldCom GA Comments*").

The pre-ordering stage encompasses those activities that a carrier undertakes to gather and verify the information needed to place an ILEC service order to accommodate a customer's requirements. Before the CLEC can even begin to place the order, the CLEC must determine what the ILEC is able to provide. The CLEC operates at an information disadvantage vis-a-vis the ILEC, whose database already indicates what services can be provided to a particular end-user, and the CLEC must overcome this disadvantage quickly to retain the customer. As the Commission has noted:

[g]iven that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that inferior access to the incumbent's OSS does not render the carrier a less efficient or responsive service provider than the incumbent.⁸⁶

The general standard that this Commission has applied to the pre-ordering stage in the context of its Section 271 evaluations is that the BOC must demonstrate that "it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC's] retail operations."⁸⁷ The Commission has previously emphasized that "providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC."⁸⁸ It is not enough, however, that the CLEC have access to the same information as does the BOC. Rather the CLEC must also have the ability to retrieve this information and process the information on terms and conditions at parity with those applied to the ILEC's retail services.

⁸⁶ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, ¶ 129 (1999) ("BANY 271 Order")

⁸⁷ *Id.*

⁸⁸ *Id.*

CLECs have been experiencing similar problems in regard to accessing pre-ordering information. SECCA observed how BellSouth's Local Exchange Navigation System ("LENS") and EDI are "often partially or totally out of service."⁸⁹ During the April-June 2001 period, there were 42 LENS outages ranging from 24 minutes to over 24 hours with the median outage lasting an hour and 15 minutes.⁹⁰ During this period, there were 28 EDI outages, which ranged from 16 minutes to as long as 2 days with the median outage lasting almost two hours.⁹¹ AT&T noted that the problem with the LENS interface has been ongoing since December 2000 and that the "EDI interface continues to suffer outages and delay the processing of CLEC orders."⁹²

CLECs use these interfaces to perform pre-ordering and ordering functions. Thus, these periods of inaccessibility render CLECs incapable of processing orders. As SECCA posits:

LENS outages interfere with a CLEC's ability to service new customers or customer prospects. The ability to order resold services, verify customer information, pull customer service records and make feature changes is suspended. EDI outages make it impossible to even order UNEs to serve new customers. Delays attributable to EDI outages can cause a CLEC to miss a committed installation date for a new customer.⁹³

CLECs have also experienced problems with customer service records ("CSRs"). BellSouth's OSS does not provide parsed CSRs to CLECs in the same manner that BellSouth's retail operations enjoy.⁹⁴ One of the major problems that CLECs have had in interfacing with a

⁸⁹ SECCA GA Reply Comments at 11.

⁹⁰ *Id.*

⁹¹ *Id.* at 11-12.

⁹² AT&T GA Comments, Item 2, at 8.

⁹³ SECCA GA Reply Comments at 12.

⁹⁴ AT&T GA Comments, Item 2, p. 4.

BOC's pre-ordering functionality pertains to "parsing"⁹⁵ pre-ordering information.⁹⁶ As this Commission has observed:

[I]n this regard, the BOC must enable competing carriers to transfer pre-ordering information electronically to the BOC's ordering interface or to the carriers' own back office systems, which may require "parsing" pre-ordering information into identifiable fields. Without an integrated system, a competing carrier would be forced to re-enter pre-ordering information manually into an ordering interface, which leads to additional costs and delays, as well as a greater risk of error. This lack of integration would place competitors at a competitive disadvantage and significantly impact a carrier's ability to serve its customers in a timely and efficient manner.⁹⁷

The lack of parsed CSRs leads to excessive CLEC order rejections. In addition, CLECs have had to expend valuable time and resources to get the information into a format that the BellSouth OSS will accept. The problem is exacerbated by the fact that many ILEC retail divisions do not have to perform parsing in order to place an order.⁹⁸ CLECs have been requesting parsed CSRs since 1998, and BellSouth will not provide this capability until early 2002.⁹⁹

CLECs have also experienced an apparent breakdown of the firewall between the LENS system and the retail side of BellSouth. Customers who have not been contacted by BellSouth in recent history are often contacted within hours of a CLEC requesting a CSR. This is a violation

⁹⁵ Parsing involves the breaking down of information in specific fields. Parsed formats provide a readable format to the data by placing lines and spaces within the text. Many BOC ordering systems require CLECs to enter data in a parsed format.

⁹⁶ *In the Matter of Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Texas*, CC Docket No. 00-65, AT&T Comments at 51-53 (April 26, 2000)(*"AT&T SBC 271 Comments"*); MCI WorldCom Comments at 9 (April 26, 2000)(*"WorldCom SBC 271 Comments"*).

⁹⁷ *BANY Order* at ¶ 137.

⁹⁸ *WorldCom SBC 271 Comments* at p. 13.

⁹⁹ *AT&T GA Comments*, Item 2, at 4; *LA PSC Staff Recommendation* at 47.

of the Interconnection Agreements and the spirit of the Telecommunications Act. A more complete discussion of this problem is contained below in the Public Interest discussion.

2. **Ordering**

This Commission has previously focused on “flow-through” rates as an indication of parity in the ordering stage.¹⁰⁰ “Flow-through” refers to orders that are transmitted electronically through the gateway and accepted into the ILEC’s back office ordering systems without manual intervention. The flow-through rate often “serves as a yardstick to evaluate whether an incumbent LEC’s OSS is capable of handling reasonably foreseeable commercial volumes of orders.” In addition, this Commission has focused on an ILEC’s “overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems.”¹⁰¹

AT&T observes that 10 to 68% of electronic CLEC orders fall out for manual processing depending on the interface and product type.¹⁰² WorldCom also documents what it terms “a high level of manual processing.”¹⁰³ The situation is so dire that the Georgia PSC had to order “the creation of an Improvement Task Force to expand the scope of CLEC electronic ordering and eliminate BellSouth system errors and designed manual fallout.”¹⁰⁴ BellSouth’s response to the problem has not been to address the root cause of the problem, rather it “has begun to measure differently to make it appear as though there has been improvement.”¹⁰⁵ BellSouth, without

¹⁰⁰ *BANY Order* at ¶ 160, fn. 488, ¶ 162, fn. 496.

¹⁰¹ *Id.* at ¶ 163.

¹⁰² *AT&T GA Comments*, Item 2, at 4.

¹⁰³ *WorldCom GA Comments* at 3.

¹⁰⁴ *AT&T GA Comments*, Item 2, at 5.

¹⁰⁵ *Id.*

notice to CLECs or approval of the Georgia commission, extended the time period for return of partially mechanized FOCs and rejects by nearly one and a half days.¹⁰⁶

AT&T states the flow-through rates in Louisiana are inadequate as well.¹⁰⁷ Staff of the LA PSC conceded there were problems noting:

Performance in the UNE category is close to meeting expectations, but performance in the business category needs improvements. The benchmark for business flow-through is 90% (in Louisiana it is 80% for an interim period of 6 months and then increases to 90%). Performance results for April, May and June are 61.25%, 60.15%, and 57.26%, respectively. The benchmark for UNEs is 85% (in Louisiana it is 80% for an interim 6 month period and increases to 90% thereafter.) Performance in this area for April, May, and June was 79.25%, 74.87% and 78.33%¹⁰⁸

Once again, flow-through is a problem that concerned the Commission in the *Second Louisiana Order*.¹⁰⁹ BellSouth still has not alleviated this concern.

This lack of flow-through and increased manual processing of orders has harmed CLECs. When an order is processed electronically, it takes on average 15 minutes for the CLEC to receive a FOC or reject notice. When the order falls out of the electronic processing and is handled manually, it takes on average 12 hours for BellSouth to provide a reject notice and at least 18 hours to provide a FOC.¹¹⁰ CLECs have to expend additional resources to determine the status of the manually processed orders and the manual processing heightens the risk of error. Manually processed orders also get later due dates since due dates are not confirmed until a FOC

¹⁰⁶ *Id.* at 5-6.

¹⁰⁷ *LA PSC Staff Recommendation* at 57.

¹⁰⁸ *Id.* at 58.

¹⁰⁹ *Second Louisiana Order* at ¶ 58.

¹¹⁰ *AT&T GA Comments*, Item 2, at 4.

is generated.¹¹¹ WorldCom notes that its customers have been experiencing a loss of dial tone shortly after migrating to WorldCom and suspects that the “excessive manual handling” of orders may be the cause.¹¹² Manual processing is clearly problematic in that it will increase costs CLEC face, and decrease the quality of service they can provide. Customers will be reluctant to change carriers if such a change is not processed in a timely and seamless manner. Given the concerns about scalability of BellSouth’s OSS, the problem may be exacerbated with increasing commercial volumes of orders.

In addition, CLECs have been experiencing difficulties in ascertaining the status of their orders. There are three types of notifications that a CLEC receives in regard to an order – acknowledgments, confirmation, and rejects. Acknowledgments state that the order has been received; confirmations tell the CLEC that the order will be performed on a specific date; and rejects notifies the CLEC that the order cannot be processed and gives the reason. CLECs have been experiencing problems in getting timely firm order confirmations (“FOCs”) and reject notices.

In May 2001, BellSouth missed the FOC Timeliness benchmark for mechanized orders for loop interoffice transport, xDSL, 2W Analog Loop (Design), 2W Analog Loop w/ LNP (Design), and 2W Analog Loop w/ LNP (Non-design).¹¹³ In June 2001, BellSouth missed the FOC Timeliness Benchmark for mechanized orders for loop and port combinations, xDSL, 2W Analog Loop w/ LNP (Design), Other Design, and LNP Standalone.¹¹⁴ BellSouth did not meet

¹¹¹ *Id.* The concern over CLEC access to due dates resulting from delays in returning FOCs due to excessive manual processing of orders was one raised by the Commission in its *Second Louisiana 271 Order*. *Second Louisiana 271 Order* at ¶ 104.

¹¹² *WorldCom GA Comments* at 4.

¹¹³ BellSouth Application, Varner Georgia Affidavit, Exhibit PM-2, p. 3.

¹¹⁴ *Id.*, Exhibit PM-3, p. 3.

the benchmark for reject notices for mechanized orders in May, June, or July 2001.¹¹⁵ BellSouth also developed metric called FOC & Reject Response Completeness which is “a complex new metric designed to indicate the percentage of CLEC service requests for which BellSouth generates and delivers a response in the form of either a reject (or clarification) of firm order confirmation.”¹¹⁶ BellSouth’s performance in regard to this metric has been woeful. For mechanized orders, it missed seven of eleven applicable sub-metrics in May;¹¹⁷ eight of twelve applicable sub-metrics in June;¹¹⁸ and seven of ten applicable sub-metrics in July.¹¹⁹ In Louisiana, in June 2001, BellSouth only met 63% of the measurements for this metric.¹²⁰ Predictably, BellSouth argues that “this measure understates BellSouth’s performance and cannot be relied upon to assess BellSouth’s performance.”¹²¹

WorldCom has been experiencing missing FOCs and order completion notifications.¹²² WorldCom also experienced high reject rates. In addition, WorldCom would submit requested due dates well within the specified interval and receive a FOC with a different longer due date. This is problematic because WorldCom would have promised the original due date to the customer and has to explain the delay to the customer.¹²³ AT&T also had problems with BellSouth’s due dates noting that BellSouth’s OSS “does not provide accurate Due Date

¹¹⁵ BellSouth Application at 73.

¹¹⁶ BellSouth Application, Varner Georgia Affidavit at ¶ 42.

¹¹⁷ BellSouth Application, Varner Georgia Affidavit, Exhibit PM-2, p.4.

¹¹⁸ BellSouth Application, Varner Georgia Affidavit, Exhibit PM-3, p.4.

¹¹⁹ BellSouth Application, Varner Georgia Affidavit, Exhibit PM-4, p.4.

¹²⁰ *LA PSC Staff Recommendation* at 56.

¹²¹ BellSouth Application, Varner Georgia Affidavit at ¶ 42.

¹²² GA PSC Docket No. 6863-U, Reply Comments of WorldCom, Inc. at 5 (July 18, 2001) (“*WorldCom GA Reply Comments*”).

¹²³ *Id.*, Affidavit of Sherry Lichtenberg at ¶ 15.

calculations for all products and services and does not preserve a due date for CLEC's electronically submitted orders that fall out for manual handling because of BellSouth's ordering OSS design or failure."¹²⁴ In Louisiana, AT&T notes "that the due date calculator provides the wrong date and that for some products, no due date is calculated."¹²⁵ BellSouth does not deny there is a problem and states it is "working swiftly" to "fix those problems."¹²⁶ While LA PSC Staff was satisfied with this, this Commission should not be. The Commission has stated an application should be complete when filed.¹²⁷ A lack of nondiscriminatory access to due dates was cited in this Commission's *Second Louisiana Order*.¹²⁸ The fact that BellSouth has failed to solve this problem three years later is further cause to reject the application.

In June 2001, BellSouth only met 71.4% of the benchmarks for order rejection notices for partially mechanized orders in Louisiana.¹²⁹ For orders submitted electronically, in May 2001, BellSouth only had 80% of rejected service requests delivered in one hour. This figure was far below the 95% benchmark.¹³⁰ BellSouth did not meet any Average Completion Notice Interval categories for UNEs in April, and only met 33.3% and 42.9% of the measures in May and June respectively. For UNE Order Completion Interval sub-metrics, BellSouth met only 71% and 79% of the sub-metrics in April and May respectively.¹³¹

¹²⁴ *AT&T GA Comments*, Item 2, at 4. The automatic due date problem is also a lingering problem from the Commission's *Second Louisiana 271 Order*. *Second Louisiana 271 Order* at ¶ 106.

¹²⁵ *LA PSC Staff Recommendation* at 48.

¹²⁶ *LA PSC Staff Recommendation* at 48.

¹²⁷ *BANY 271 Order* at ¶ 35.

¹²⁸ *Second Louisiana Order* at ¶¶ 96-106, .

¹²⁹ *LA PSC Staff Recommendation* at 56.

¹³⁰ *Id.*

¹³¹ *Id.* at 59.

Clearly there are pervasive problems with BellSouth's OSS. These problems coupled with the lack of overall functionality and capacity of BellSouth's OSS are cause for tremendous concern. The Commission must be very careful in regard to pronouncements it makes regarding BellSouth's OSS in this application since BellSouth will attempt to bootstrap any findings made in this application to its future applications much as Verizon and SBC did with the New York and Texas findings. The pervasive OSS problems coupled with the questions about the integrity of the performance data demonstrate that the Commission should not find checklist compliance regarding OSS for this application much less future ones. Unlike New York and Texas, Georgia is not the most populous state in the BellSouth region. BellSouth's OSS performance in Florida would provide a much better insight into BellSouth's OSS and the Commission should refrain from making any region-wide conclusions about BellSouth's OSS until it considers that application.

In addition to the OSS required by the Act for processing of LSR-based orders, CLECs also utilize another BellSouth system, CAFÉ, to process Access Service Requests – orders for the special access facilities discussed supra. The CAFÉ system was implemented by BellSouth in December 2000 to replace an aging BDS-TELIS system. This system also experiences outages and fails to communicate properly with BellSouth's internal systems that process ASRs..

3. Billing

US LEC has been experiencing problems with BellSouth charging incorrect interconnection rates. When new interconnection agreements are implemented between the parties, BellSouth continues to charge the old rates. US LEC is attaching as Exhibit E a series of correspondence addressing this issue. BellSouth, in a September 12th letter, admits the problem and states that it is due to information pertaining to US LEC "was inadvertently not loaded into

the system.” As US LEC noted, the problem was not an isolated case and occurred multiple times throughout the year. It took BellSouth 60 days to provide a post mortem on the issue and the post mortem did not provide much information. This issue was one of vital import for US LEC and directly impacted their revenues. The casual response of BellSouth demonstrates its lack of concern.

V. BELLSOUTH DOES NOT COMPLY WITH CHECKLIST ITEM 13

Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”¹³² The Commission has noted that in regard to reciprocal compensation requirements under Checklist Item 13, a BOC is required to follow “states’ interpretations and requirements promulgated under their interpretation of interconnection agreements, including states’ requirements concerning ISP-bound traffic.”¹³³

The recent reevaluation by the FCC of the proper treatment of intercarrier compensation of telecommunications traffic delivered to ISPs does nothing to alter the tenor of this Commission’s rulings with respect to a BOC’s reciprocal compensation obligations in regard to existing interconnection agreements.¹³⁴ The FCC explicitly stated that its determination does not “alter existing contractual obligations,” and “does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the

¹³² 47 U.S.C. § 271(c)(2)(B)(xiii).

¹³³ *Verizon MA 271 Order* at ¶ 215.

¹³⁴ *See In the matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131 (Released April 18, 2001) (the “*FCC Reciprocal Compensation Order*”).

interim regime we adopt here.”¹³⁵ In Massachusetts, for example, the Commission required a showing that Verizon is “providing reciprocal compensation under the obligations in its Department [MA DTE]-approved interconnection agreements and tariffs, as well as relevant Department Orders” to find compliance with Checklist Item 13.¹³⁶

BellSouth has not met its reciprocal compensation obligations under GA PUC-approved interconnection agreements. US LEC has entered into a series of interconnection agreements with BellSouth in Georgia and under all those agreements it has been forced to litigate to receive reciprocal compensation payments for ISP-bound traffic. The first Interconnection Agreement (“First Agreement”) was entered into on November 12, 1996, and the second was effective November 1, 1998 (“Second Agreement”). The dispute regarding reciprocal compensation was litigated between the parties in *Complaint of US LEC of Georgia, Inc. Against BellSouth Telecommunications, Inc. and Request for Immediate Relief*, Ga. P.S.C. Docket No. 9577-U. In the Order issued in that proceeding, the GA PSC found that both the first and second agreements require that reciprocal compensation be paid for traffic bound to Internet Service Providers (“ISP-bound traffic”).¹³⁷

BellSouth, however, continued to maintain its intransigent refusal to provide reciprocal compensation for ISP-bound traffic. This refusal was maintained the unequivocal language of

¹³⁵ *Id.* at ¶ 82.

¹³⁶ *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, ¶ 216 (Apr. 16, 2001) (“*Verizon MA 271 Order*”)

¹³⁷ *Complaint of US LEC of Georgia, Inc. Against BellSouth Telecommunications, Inc. and Request for Immediate Relief*, Ga. P.S.C. Docket No. 9577-U, Order at 22 (June 16, 2000) (“*US LEC Decision*”).

this Commission's orders not only in Docket No. 9577-U, but in the face of the orders in other related proceedings.¹³⁸ The Commission, in that order, held that:

BellSouth Telecommunications, Inc. must comply with the reciprocal compensation terms of the Intermedia-BST Agreement, which this Commission construes and interprets as requiring reciprocal compensation payments for termination of local calls, including ISP traffic¹³⁹

There have also been three other orders of the GA PSC concluding that *all* local traffic, including traffic terminating at ISPs, is subject to the reciprocal compensation.¹⁴⁰ As the GA PSC noted in the *US LEC Order*:

this Commission has established a long line of similar rulings and found that ISP traffic is subject to the reciprocal compensation provisions of several interconnection agreements. The Commission has rejected the same arguments that BellSouth makes here on four separate occasions and those orders have been upheld by the United States District Court for the Northern District of Georgia.¹⁴¹

This Commission reaffirmed that its conclusions about ISP traffic being subject to reciprocal compensation were "general conclusions not limited to the circumstances of the contract in the case, and that these conclusions shall have precedential effect."¹⁴²

The GA PSC has stated that:

¹³⁸ *Complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc.*, Docket No. 9920-U, Order Deciding Complaint (Ga. P.S.C. 1999)(*"Intermedia Decision"*).

¹³⁹ *Intermedia Decision* at 3.

¹⁴⁰ *Complaint of MFS Intelenet of Georgia, Inc. Against BellSouth Telecommunications, Inc. and Request for Immediate Relief*, Docket No. 8196-U, Order Affirming and Modifying the Hearing Officers's Decision (Ga. P.S.C. Dec. 28, 1998) (the *"MFS Decision"*); *In Re: Petition of MCI Metro for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc.*, Docket No. 6865-U, Order Deciding Complaint (Ga. P.S.C., Dec. 28, 1998) (the *"MCI Metro Decision"*); *Complaint of e.spire Communications, Inc. Against BellSouth Telecommunications, Inc.*, Docket No. 9281-U, Order Affirming and Modifying the Hearing Officer's Decision (Ga. P.S.C., March 3, 1999)(the *"e.spire Decision"*).

¹⁴¹ *US LEC Decision* at 14; see, e.g., *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc.*, 97 F.Supp.2d 1363 (May 3, 2000)(finding Ga. P.S.C. interpretation of interconnection agreement as to reciprocal compensation obligations for ISP-bound traffic to be reasonable).

¹⁴² *Id.*, citing, *MFS Decision* at 9.

[T]he Commission also finds, however, that the terms of the contract at issue in this case require the parties to pay reciprocal compensation for ISP traffic. This finding is separate and independent from the Commission's findings that ISP traffic is jurisdictionally intrastate. Indeed, even assuming that the FCC maintains its conclusion on the jurisdictional question, and does so in a manner that satisfies the Bell Atlantic court, this Commission would still find that the interconnection agreements at issue in the case require reciprocal compensation for calls made to ISPs.¹⁴³

Thus, there was no clearly basis for BellSouth to deny US LEC payment for the amounts due and owing. BellSouth openly refused to follow "states' interpretations and requirements promulgated under their interpretation of interconnection agreements, including states' requirements concerning ISP-bound traffic." The fact that US LEC has had to litigate for years to get BellSouth to adhere to these requirements demonstrates BellSouth's failure in regard to Checklist Item 13.

US LEC and other CLECs have also been forced to litigate the issue that it can bill BellSouth at the tandem interconnection rate. US LEC's switches clearly perform functions similar to those performed by BellSouth's tandem switches and the switches serve comparable geographic areas. Despite this, BellSouth refused to pay the tandem rate. The Georgia PSC recently ordered BellSouth to compensate US LEC at the tandem rate.¹⁴⁴ As the Georgia PSC noted:

US LEC's point that duplication of the BellSouth architecture is contrary to the spirit of the Telecommunications Act is persuasive. The purpose of the Telecommunications Act is to promote innovation and competition in the telecommunications industry. To require US LEC to mimic BellSouth's architecture could discourage competing carriers from investing in state-of-art facilities in the State. Moreover, BellSouth admitted that a carrier utilizing a Lucent 5ESS switch with the proper software and a SONET ring architecture is able to provide the same call transport and termination capability to end users as BellSouth's architecture of tandem and end office switches.¹⁴⁵

¹⁴³ *US LEC Decision* at 15-16.

¹⁴⁴ GA PSC Docket No. 9577-U, Order on Tandem Interconnection Rate at 9 (May 21, 2001)

¹⁴⁵ *Id.* at 7.

Given this admission, it is hard to conceive why US LEC had to be forced to litigate this issue. Clearly BellSouth has used litigation as a way to forestall and avoid its legal obligations, particularly in regard to reciprocal compensation. Accordingly, the Commission should deny BellSouth's application for failure to comply with Checklist Item 13.

VI. BELLSOUTH'S APPLICATION IS NOT IN THE PUBLIC INTEREST

A. The Standard

Section 271(d)(3)(C) of the Act directs that the Commission shall not give Section 271 authorization unless the requested authorization is consistent with the "public interest, convenience and necessity."¹⁴⁶ This public interest standard was intended to mirror the broad public interest authority the Commission had been given in other areas.¹⁴⁷ The legislative history of the 1996 Act evidences an unequivocal intent on the part of Congress that the Commission "in evaluating section 271 applications . . . perform its traditionally broad public interest analysis of whether a proposed action or authorization would further the purposes of the Communications Act."¹⁴⁸ As a Senate Report noted, the public interest standard is "the bedrock of the 1934 Act, and the Committee does not change that underlying premise through the amendments contained in the bill."¹⁴⁹ The Report went on to add that "in order to prevent abuse of [the public interest standard], the Committee has required the application of greater scrutiny to the FCC's decision

¹⁴⁶ 47 U.S.C. § 271(d)(3)(C).

¹⁴⁷ See 47 U.S.C. § 241(a); § 303; § 309(a); § 310(d).

¹⁴⁸ *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, ¶ 385 (1997) ("*Ameritech Michigan 271 Order*").

¹⁴⁹ *Id.* at n. 992, quoting, S. Rep. Mo. 23, 104th Cong., 1st Sess. 44 (1995).

to invoke that standard as a basis for approving or denying an application by a Bell operating company to provide interLATA services.”¹⁵⁰

The Commission recognized the huge import that Congress placed on the public interest standard by crafting a strong definition of the standard in the Section 271 context. The Commission noted that under the standard it was given “broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region market is consistent with the public interest.”¹⁵¹ The Commission determined that as part of this broad authority it should consider factors relevant to the achievement of the goals and objectives of the 1996 Act.¹⁵² The Commission explicitly recognized that “Congress did not repeal the MFJ in order to allow checklist compliance alone to be sufficient to obtain in-region, interLATA authority.”¹⁵³

Predictably, the RBOCs initially attempted to dilute the public interest standard. For instance, BellSouth argued that the public interest requirement is met whenever a BOC has implemented the competitive checklist.¹⁵⁴ BellSouth also contended that the Commission’s responsibility to evaluate public interest concerns is limited narrowly to assessing whether BOC entry would enhance competition in the long distance market.¹⁵⁵ The Commission rejected both of these claims and reaffirmed that it will consider “whether approval of a section 271 application will foster competition in all relevant telecommunications markets (including the

¹⁵⁰ *Id.*

¹⁵¹ *Ameritech Michigan 271 Order* at ¶ 383.

¹⁵² *Id.* at ¶ 385.

¹⁵³ *Id.*

¹⁵⁴ *In the Matter of the Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶ 361 (1998).

¹⁵⁵ *Id.*

relevant local exchange market), rather than just the in-region, interLATA market.”¹⁵⁶ The Commission stated that it would not be satisfied that the public interest standard has been met unless there is an adequate factual record that the “BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition.”¹⁵⁷ As the Department of Justice notes, in-region, interLATA entry by a Bell Operating Company (“BOC”) should be permitted only when the local markets in a state have been “fully and irreversibly” opened to competition.¹⁵⁸

The importance of the public interest standard was recently reaffirmed by Senators Burns, Hollings, Inouye, and Stevens in a letter to Chairman Powell.¹⁵⁹ In that letter the Senators stated:

[t]he public interest requirements were added to Section 271 to ensure that long distance authority would not be granted to a Bell company unless the commission affirmatively finds it is in the public interest. Meaningful exercise of that authority is needed in light of the current precarious state of the competitive carriers which is largely due to their inability to obtain affordable, timely, and consistent access to the Bell networks.¹⁶⁰

The Commission has traditionally focused on both the current state of competition in a particular market and assurances of future compliance to ensure future competition in evaluating the public interest standard.¹⁶¹ In both these areas, BellSouth’s application is lacking.

¹⁵⁶ *Id.* Congress rejected an amendment that would have stipulated that full implementation of the checklist satisfies the public interest criterion. *Ameritech Michigan 271 Order* at ¶ 389.

¹⁵⁷ *Ameritech Michigan 271 Order* at ¶ 386.

¹⁵⁸ *In the Matter of Application of Verizon Pennsylvania, Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Evaluation of the United States Department of Justice at 2 (July 26, 2001); *see also*, *Ameritech Michigan 271 Order* at ¶ 382.

¹⁵⁹ Letter from Senators Conrad Burns, Ernest F. Hollings, Daniel K. Inouye, Ted Stevens to The Honorable Michael K. Powell, Chairman, Federal Communications Commission (April 17, 2001) (“*Senators’ Letter*”).

¹⁶⁰ *Id.* at 3.

¹⁶¹ *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, (Jan. 22, 2001) ¶¶ 266-281 (“*SWBT KS/OK 271 Order*”).